

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A

JUDGE, No. 04-239,

JUDGE RICHARD H. ALBRITTON, JR.

Florida Supreme Court

Case No. SC05-851

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**MEMORANDUM IN OPPOSITION TO RESPONDENT’S MOTION TO DISMISS, OR  
IN THE ALTERNATIVE MOTION TO COMPEL SEPARATE  
STATEMENTS OF CANON VIOLATION**

COMES NOW the undersigned, as Special Counsel to the Judicial Qualifications Commission (“JQC”) and responds to Honorable Richard H. Albritton, Jr.’s motion as follows:

**I. INTRODUCTION**

On May 17, 2005 the Judicial Qualifications Commission issued a Notice of Formal Charges, pursuant to Rule 6(f) of the Florida Judicial Qualifications Commission Rules, to Judge Richard H. Albritton, Jr. Following multiple extensions of time to respond, on July 25, 2005 Judge Albritton filed a Motion to Dismiss, or in the Alternative, Motion to Compel Separate Statements of Canon Violations. In his motion, the Judge argues that Judicial Qualifications Commission Rule 12(a) requires the JQC’s Notice of Formal Charges to conform to Florida Rule of Civil Procedure 1.110(f). Alternatively he contends that if a Notice of Formal Charges does not need to conform to Florida Rule of Civil Procedure 1.110(f), the JQC’s Notice is still deficient because it fails to specify the essential facts on which each charge is based as required by Fla. Jud. Qual. Comm’n R. 6(g) (“Rule 6(g)”) and should be amended. These arguments are

without merit. The Notice of Formal Charges does not need to conform to Florida Rule of Civil Procedure 1.110(f) and complies fully with Rule 6(g). Judge Albritton's motion should be denied in total.

## **II. ARGUMENT**

### **A. Florida Rule of Civil Procedure 1.110(f) does not apply to a Notice of Formal Charges.**

The respondent argues that the JQC's Notice of Formal Charges was deficient and should be dismissed because it failed to comply with Fla.R.Civ.P 1.110(f). In support of his argument, Judge Albritton cites Fla. Jud. Qual. Comm'n Rule 12(a) which provides that "[i]n all proceedings before the Hearing Panel, the Florida Rule of Civil Procedure shall be applicable except where inappropriate or as otherwise provided by these rules." Contrary to Judge Albritton's arguments, the Florida Rules of Civil Procedure do not apply across the board to JQC proceedings. Rather, in JQC proceedings the Rules of Civil Procedure simply fill gaps and govern in situations where JQC rules are silent.

Following Florida Rule of Civil Procedure 1.110(f) would be inappropriate with respect to the Notice of Formal Charges. Rule 6(g) provides specific pleading requirements for the Notice of Formal Charges. Rule 6(g) only requires that the Notice of Formal Charges "shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based." In comparison, Florida Rule of Civil Procedure 1.110(f) applies to "all averments of claim" and sets forth a procedure that is not consistent with Rule 6(g). Rule 1.110(f) directly conflicts with Rule 6(g)'s requirement that the Notice of Formal Charges be issued in "ordinary and concise language." The Notice of Formal Charges cannot comply with both Florida Rule of Civil Procedure 1.110(f) and Rule 6(g). Since the JQC rules provide that the Florida Rules of Civil

Procedure only apply when they do not conflict with the JQC rules, the specific procedure contained in Rule 6(g) should be followed and not Florida Rule of Civil Procedure 1.110(f).

**B. The Notice of Formal Charges Complies with Judicial Qualifications Rule 6(g)**

Judge Albritton claims that the Notice of Charges fails to comply with Rule 6(g) because the Notice does not specify which act or acts correspond to each alleged Canon violation. Judge Albritton is unable to cite any rules, statutes or cases which support the proposition that the JQC's Formal Notice of charges is required to be structured as he claims. That is because there is no authority to support his interpretation of Rule 6(g).

As stated above, Rule 6(g) only requires that the notice "specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based." There is no requirement contained in Rule 6(g) that the Notice attribute specific Canon violations to specific fact allegations, or for that matter even specifically identify the Canons that have been violated. The JQC's Notice of Formal charges clearly places Judge Albritton on notice as to which factual allegations support which alleged Canon violations.

Additionally, the Notice of Formal Charges is neither vague nor ambiguous and clearly places the respondent on notice as to the Canon he is accused of violating. The Notice further outlines the factual allegations in great detail.

### **III. CONCLUSION**

Contrary to Judge Albritton's arguments, the Notice of Formal Charges is not required to comply with Rule 1.110(f). Florida Judicial Qualifications Commission Rule 6(g) contains the only requirements applicable to the form and content of the Notice of Formal Charges. Applying Rule 1.110(f) to the Notice of Formal Charges would be superfluous and inconsistent with Rule 6(g). Finally, the Notice of Formal Charges fully complies with Rule 6(g) and does not need to be amended.

For the foregoing reasons, Judge Albritton's motion should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this \_\_\_\_ day of August, 2005 to:

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